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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 )  
Amendment of the Commission's ) GEN Docket No. 90-314  
Rules to Establish New Personal )  
Communications Services )

**REPLY TO OPPOSITIONS TO  
PETITION FOR RECONSIDERATION**

**Introduction**

Pursuant to Section 1.429 of the Commission's Rules, General Communication, Inc. (GCI), hereby submits these comments in reply to the oppositions to its petitions for reconsideration of the Commission's Second Report and Order in the above-captioned proceeding.<sup>1</sup>

In its petition, GCI requested reconsideration on two issues: the 5 percent ownership attribution standard; and, the failure to preclude dominant cellular carriers from one 30 MHz block. No comments were filed in opposition to reconsideration of the 5 percent ownership attribution standard. However, several parties filed in opposition to the proposal that dominant cellular carriers should be precluded from holding any licenses in Block A.

GCI also replies to the opposition and comments on other petitions for reconsideration filed herein. Most particularly, GCI opposes the comments by cellular carriers, including rural telephone companies with cellular operations,

<sup>1</sup>Amendment of the Commission's Rules to Establish Personal Communications Services, GEN Docket No. 90-314, FCC 93-451, released October 22, 1993 (Second Report and Order).

that seek relaxation of the cellular eligibility rules. GCI also opposes the comments that support allowing license holders to partition the licensed area.

**I. The Dominant Cellular Carriers Should Be  
Precluded from Holding Any Licenses in Block A.**

In its petition for reconsideration, GCI explained that the Commission's decisions in this proceeding, when combined with proposed procedures for competitive bidding for PCS licenses, provide the nation's large cellular carriers an undesirable ability to distort the PCS market and thwart the goals of the Commission. The power of the large cellular carriers to block any nationwide license and hinder the development of the full potential of PCS will enable those carriers to protect their existing duopolistic market. For these reasons, GCI proposed, as did MCI, that the dominant cellular carriers be precluded from one of the 30 MHz Blocks, and GCI designated Block A as the one from which the dominant cellular carriers should be precluded.

Several parties<sup>2</sup> opposed the petitions of GCI and/or MCI. The arguments presented by those parties are not convincing and demonstrate a failure to understand GCI's proposal and the reason for it.

Bell Atlantic's opposition to the proposal is based on entirely false reasoning. Bell Atlantic stated that the goal of the proposal is "that an MCI-led consortium would be the only eligible entity able to apply for and win a nationwide PCS license."<sup>3</sup> The proposal would in no way limit the number

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<sup>2</sup>Bell Atlantic Personal Communications, Inc. (Bell Atlantic), GTE Service Corporation (GTE), McCaw Cellular Communications, Inc. (McCaw), Sprint Corporation and Telephone and Data Systems, Inc. (TDS).

<sup>3</sup>Bell Atlantic Opposition, fn. 28.

of entities that can apply for and win a nationwide PCS license. The dominant cellular carriers are already precluded from winning a nationwide license in Block A or B because of the existing cellular attribution rule. While GCI's proposal would certainly increase the likelihood of a nationwide license by eliminating the ability of the dominant cellular carriers to block a nationwide license, it would increase the likelihood for all interested eligible entities, not just for a MCI consortium.

Similarly, McCaw argued that "MCI and GCI are merely seeking to gain an unwarranted competitive advantage by striving to exclude all entities that could provide effective competition to the national PCS network envisioned by both of these petitioners."<sup>4</sup> As explained, the dominant cellular carriers are already excluded from owning a national PCS license. Perhaps, however, McCaw is actually demonstrating that nationwide dominant cellular providers will be able to compete with a "national PCS network" without obtaining a national license in Block A or B. GCI agrees. With existing cellular spectrum plus the additional 10 MHz of spectrum that the cellular providers will remain eligible to hold, the nationwide dominance of those carriers will increase. It is for precisely that reason that a nationwide PCS license, in competition with the nationwide cellular carriers, is desirable.

GTE and Sprint opposed the argument of GCI and MCI that the existing duopolistic market is not truly competitive, and GTE further attacked MCI for arguing that the wireless market with nine dominant carriers is not

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<sup>4</sup>McCaw Comments, p. 19.

competitive while the interexchange market with three major carriers is competitive. GTE obviously ignores the fact that while there may be nine dominant cellular carriers nationwide, there are only two cellular carriers in each area. Also, in many areas, a second dominant cellular provider has brought the non-wireline license. GTE further ignores the fact that the three major interexchange carriers, along with hundreds of small interexchange carriers, make the interexchange market much more competitive than the cellular market.

Telephone and Data Systems (TDS) argued simply that "it makes no sense to exclude cellular companies which have spearheaded the launch and expansion of cellular mobile services in the last decade."<sup>5</sup> Again, GCI agrees; but TDS misses the point. Cellular companies will not be excluded. In region, the GCI proposal does not affect any cellular company because no cellular company can acquire 30 MHz in region. Out of region, cellular companies will still be able to own a 30 MHz license, or acquire 30 MHz by a combination of licenses. There remains ample opportunity for cellular companies to participate, while precluding the dominant cellular carriers from blocking a nationwide license.

Thus, the arguments presented against the petitions for reconsideration of GCI and MCI are not convincing. The simple fact remains that PCS will reach its full potential, more quickly, and provide greater competition with

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<sup>5</sup>TDS Comments, p. 12.

existing cellular carriers, if the dominant cellular carriers are precluding from acquiring licenses in Block A.

**II. The Spectrum Allocation Should Not Be Modified.**

In comments and oppositions, various parties requested modifications in the Commission spectrum allocation. Many of these comments, particularly from cellular entities, supported reductions in the size of the spectrum and geographic area of each license. GCI opposes these comments.

No party has supported a spectrum allocation that is superior to that adopted by the Commission. Although some parties, like GCI, might have preferred both larger spectrum blocks and areas, and others prefer smaller blocks and areas, the Commission's decision strikes a fair balance.

Above all, the Commission should not break the spectrum into very small allocations licensed only in small areas, such as BTAs or MSAs. This would ensure that the full potential of PCS is not achieved.

**III. Cellular Eligibility Rules Should Not Be Relaxed.**

Several parties<sup>6</sup> again argued for a relaxation of the restrictions limiting cellular carriers to 10 MHz within their cellular service areas, and several<sup>7</sup> also argued that the restriction should not apply to "rural" telephone companies. These arguments should be rejected.<sup>8</sup>

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<sup>6</sup>Cellular Telecommunications Industry Association (CTIA), Citizens Utilities Company (Citizens), McCaw and TDS.

<sup>7</sup>Citizens and TDS.

<sup>8</sup>These arguments were also opposed by Cellular Information Systems and PCS Action.

In its Second Report and Order, the Commission carefully consider the appropriate balance between allowing cellular carriers to participate in PCS without restriction and entirely excluding cellular carriers from PCS.

Recognizing the potential for unfair competition by cellular carriers, yet desiring to permit cellular operators to participate in providing PCS, the Commission chose to limit cellular operators to 10 MHz within their cellular service areas, while revising cellular service rules to state explicitly that cellular licensees may provide any PCS type services.<sup>9</sup>

This decision by the Commission provides cellular providers with ample opportunity to participate in PCS. The decision reasonably balances all interests and should not be revised.

The Commission should also reject all requests to exempt rural telephone companies from the restrictions applicable to cellular operators. A rural telephone company that provides cellular service within its local exchange area already has greater monopoly power within that area than does a cellular provider in a more populated or urban area (whether or not that cellular provider is also a local exchange company). Thus, the potential for unfair competition in PCS by a rural telephone company holding an in-region cellular license is even greater than the potential for unfair competition by other cellular carriers. Rural telephone companies providing cellular service should be restricted to at least as great an extent as other cellular providers, if not more.

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<sup>9</sup>Second Report and Order, paragraphs 105, 106, 111.

#### **IV. Partitioning Should Not Be Allowed.**

Several parties<sup>10</sup> argued that PCS license holders should be allowed to partition PCS service areas. This should not be permitted.

Partitioning would be detrimental to rural areas. If partitioning is allowed, license holders can be expected to retain the most profitable areas and dispose of other areas. At worst, partitioning could be used to completely avoid the build-out requirements established by the Commission.

Partitioning would also lead to a multiplicity of small, possibly incompatible systems. This would lower the quality of PCS across an entire BTA or MTA, not just within the partitioned rural areas.

For these reasons, partitioning is not in the public interest and should not be allowed.

#### **Conclusion**

The Commission should grant GCI's petition for reconsideration of the 5 percent ownership attribution standard and the failure to preclude dominant cellular carriers from one 30 MHz block. No party opposed reconsideration of the 5 percent ownership attribution standard for PCS licenses. Preclusion of the dominant cellular carriers from Block A would lead to more competition in wireless services and more prompt development of PCS.

The Commission should deny reconsideration of the spectrum allocation and of the restrictions on cellular operators and should not allow partitioning or exempt rural telephone companies from cellular restrictions.

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<sup>10</sup>Association of Independent Designated Entities, Citizens and Telocator.

None of these proposed revisions to the Second Report and Order are in the public interest.

Respectfully submitted,

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January 13, 1994

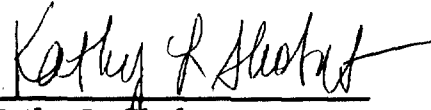


**STATEMENT OF VERIFICATION**

I have read the foregoing, and to the best of my knowledge, information and belief there is good cause to support it, and that it is not interposed for delay.

I verify under penalty of perjury that the foregoing is true and correct.

Executed January 13, 1994.



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